FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

WRIT PETITION No. 3267/2007
(Atul Ltd. Atul, Distt. Valsad Vs U.O.I. & 2 ors.)

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. M.G. Bhangde, Sr. Counsel for petitioner.
Mr. S.K. Mishra, Adv. for R-1.
Mr. S.C. Mehadia, Adv. for R- 2 and 3.

CORAM : D.D. SINHA &
SMT. VASANTI A. NAIK, JJ.
DATED : DECEMBER 18, 2007.

Heard Mr. Bhangde, the learned Senior Counsel for the petitioner, Mr. Mishra for the respondent no.1- Union of India, and Mr. Mehadia for respondent nos. 2 and 3.

Mr. Bhangde, the learned Senior Counsel, has submitted that the petitioner-Company manufactures Dyes and Heavy Chemicals and, therefore, needs coal as a fuel for the said industry. Western Coal Field Limited (WCL), the respondent no.3, supplies coal to the petitioner-Industry under “Linkage” system at “Notified Price” which was initially fixed by the Union of India, the respondent no.1. At a later point

of time, the Coal India Limited (CIL), the respondent no.2, was supplying the coal to the petitioner Industry.

Mr. Bhangde, the learned Senior Counsel, further contended that in December, 2004, two subsidiaries of CIL namely, Bharat Cooking Coal Limited and North Eastern Coal Limited introduced a scheme to sell coal by “E-Auction” and to charge average “E-Auction Price” instead of “Notified Price” to the linked consumers.

It is further contended by the learned Senior Counsel that in April, 2005, the WCL, the respondent no.3, also introduced the scheme to sell the coal by “E-Auction” and to charge “E-Auction Price” instead of “Notified Price” to the linked consumers like the petitioner. On 28/6/2005, the present petition was filed challenging the “E-Auction” scheme and the decision of CIL and WCL to charge average “E-Auction Price” to the linked consumers. On 4/7/2005, the petition was admitted and the interim order was passed, the operative part of which reads thus-

“The Respondent Nos. 2 and 3 are directed to supply coal to the petitioner at notified price subject the petitioner's depositing with

Western Coal Fields Ltd. the difference between the average E-Auction price and notified price. The amount so deposited will be kept in the separate account by Western Coal Fields Ltd. in the Nationalised Bank in fixed deposit and that would be subject to the final orders that would be passed by this Court. The other contentions raised would be subject, as set out earlier, to final order in the writ petition."

Mr. Bhangde, the learned Senior Counsel, further contended that on 12/12/2005, the Apex Court passed an interim order directing the linked consumers to pay in addition to the "notified price", 33.1/3% of the enhanced price and furnish security for the balance 66.2/3% of the enhanced price and recorded an undertaking of the CIL and its subsidiaries that in case the challenge to the "E-Auction" scheme is upheld, the enhanced price paid by the petitioners will be refunded within 6 weeks from the date of judgment with interest @ 12% per annum from the date of payment till the date of repayment. Said order was applicable to the objections which were filed and, at the relevant time, pending before the Apex

Court.

It is further contended by the learned Senior Counsel for the petitioner that on 1/12/2006, the Apex Court, by its judgment in the case of **Ashoka Smokeless Vs. Union of India** (2007) 2 SCC 640, upheld the judgment of Gauhati High Court and set aside the judgment of M.P. High Court and struck down the "E-Auction" scheme. It is submitted that in spite of the striking down of the "E-Auction" scheme by the Apex Court, the CIL and its subsidiaries did not refund the price charged in excess of "Notified Price". Hence contempt petitions were filed before the Apex Court. On 30/10/2007, the Apex Court has passed an order in the contempt petitions in view of the statement of the learned Solicitor General of India, the relevant part of which reads thus-

"The amount paid by the petitioners, in excess of the "Notified Price" shall be refunded to them upon production of t**he** documents which may be submitted in that behalf".

Mr. Bhangde, the learned Senior Counsel for the petitioner, therefore, contended that in the circumstances, the

respondent nos. 2 and 3 are liable to refund the amount paid by the petitioner in excess of “Notified Price” including the amount kept in fixed deposits under the interim order passed by this Court and the interest thereon.

Mr. Mehadia, the learned counsel for the respondent nos. 2 and 3, does not dispute the factual and legal aspects of the matter referred to above. However, it is submitted that so far as the entitlement of the petitioner for grant of excess amount paid by the petitioner on and above the “Notified Price” to the WCL, the respondent no.3, from the date of interim order i.e. 4/7/2005, is concerned, which is kept in fixed deposit, shall be refunded with interest which is accrued thereon, to the petitioner, within six weeks. However, so far as the excess amount on and above the “Notified Price” paid prior to the passing of the interim order dated 4/7/2005, from the date of “E-Auction” Scheme came into existence, is concerned, since the issue in this regard is pending before the Apex Court and those petitions are likely to be listed for orders in the first week of January, 2008, the issue should be kept open.

We have considered the contentions canvassed by the learned counsel for the petitioner as well as the respondent nos. 2 and 3. In view of the above referred undisputed facts as well as decision of the Apex Court and in view of the statement made by Mr. Mehadia, the learned counsel for the respondent nos. 2 and 3, the cause of action in the present petition does not survive.

Petition is disposed of accordingly.

JUDGE **JUDGE**

RMP